In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 1080

GERALD M. LUKASIK, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-9a) is reported at 341 F.2d 325.

JURISDICTION

The judgment of the court of appeals was entered on January 29, 1965. A petition for rehearing was denied on March 15, 1965. The time to file a petition for a writ of certiorari was extended to April 19,

1965, and the petition was filed on that day. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, on a trial for conspiracy to counterfeit money, the district court properly admitted evidence that petitioner printed other counterfeit matter on the same press at the direction of one of the co-conspirators.

STATEMENT

Petitioner was convicted in the United States District Court for the Northern District of Illinois of conspiring with others to make counterfeit five dollar bills. He was sentenced to imprisonment for five years, with eligibility for parole at any time. The conviction was affirmed on appeal.

The evidence showed that counterfeit bills which had come into the possession of the government were made from the same negative as scraps of counterfeit $5 bills found in the printing press; the bills corresponded to part of a negative found in the trash at premises which had been leased to petitioner's co-defendant, Tinucci (R. 28-29, 153-155, 181-192). There was evidence that Tinucci, using assumed names, had bought a press, paper and other supplies for those premises (R. 32-33, 47-49, 51-52, 62-65). Tinucci had also leased a multilith off-set machine and camera. Petitioner (using the name Jarzak) was with him during the negotiations for that ma-

chine (R. 69-71, 76, 88). When the premises were searched on February 2, 1961, the camera contained two negatives of Selective Service cards bearing the names of petitioner and Baran (R. 155-156, 246).

Petitioner, a printer, admitted, after his arrest, that he was approached by Tinucci in the summer of 1960 to help Tinucci set up a printing company. According to petitioner, Tinucci said that he did not know very much about printing and that, in return for petitioner's assistance in setting up the shop, petitioner would be allowed to use the equipment at night to make some extra money. Petitioner said that he had helped Tinucci buy a press and had done some small printing jobs at the plant at night. He had seen no evidence of counterfeiting. He also denied that he had printed any counterfeit selective service or voter registration cards (R. 203-204). When shown printing paper with such cards on it, petitioner admitted that he had printed them but said that Tinucci was not with him and had no knowledge thereof (R. 204-205).

Robert J. Baran, a friend of petitioner's, testified that petitioner introduced him to Tinucci (who used the name Rocco) in November 1960. Tinucci said he was going to open a printing business and needed someone to drive for him (R. 106). Baran worked with petitioner in setting up the shop in December, 1960, and saw petitioner do some small printing jobs during the evenings (R. 110). Over objection (see R. 113-131), Baran was allowed to testify that in February, 1961 petitioner brought him a cardboard box (the box which contained the Selective Service

and voter registration cards) and said that he had made them for Tinucci, who was supposed to sell them. Petitioner told Baran he did not wish to keep them in his house (R. 131-132). There was evidence that petitioner was seen at the printing shop in daytime hours, between November, 1960 and January, 1961 (R. 42-43).

ARGUMENT

Petitioner argues that it was prejudicial error to admit any testimony relating to the selective service and voter registration cards. He says that this evidence was not only prejudicial in itself, but that it effectively prevented him from taking the stand in defense of the counterfeiting charge. The evidence however, was directly material to the charge against petitioner and was properly received. It was admitted that petitioner had use of the printing press where the scraps of counterfeit bills were found. The issue was whether he was merely allowed to use the press to make some extra money (as he claimed) or whether he was also used as the printer of the counterfeit money. Evidence that he did more than help Tinucci set up the shop, that he did printing of counterfeit matter and that he admitted doing so at Tinucci's direction went directly to the contested issue in the case. As such it was admissible, whether or not it incidentally disclosed evidence of another crime. *Moore* v. *United States*, 150 U.S. 57; *Williamson* v. *United States*, 207 U.S. 425; *Fernandez* v. *United States*, 329 F.2d 899, 907-908 (C.A. 9),

certiorari denied, 379 U.S. 832; *Grant* v. *United States*, 255 F.2d 341 (C.A. 6), certiorari denied, 358 U.S. 828. And since the evidence as to the cards was relevant, the trial court properly declined to assure petitioner that, if he took the stand, he would not be questioned on that subject.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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